

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CASSANDRA BRUCE,

Plaintiff,

CASE NO. 12-CV-12359

v.

DISTRICT JUDGE GEORGE CARAM STEEH
MAGISTRATE JUDGE CHARLES BINDER

JOHN DOE,

Defendant.

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

I. RECOMMENDATION

For the reasons set forth below, **IT IS RECOMMENDED** that the case be *sua sponte* **DISMISSED WITHOUT PREJUDICE** and the partial filing fee be refunded to Plaintiff.

II. REPORT

On August 29, 2012, this case was referred to the undersigned magistrate judge for all pretrial proceedings pursuant to 28 U.S.C. § 636(b)(1).

The case was opened in May 2012 when the Court received a letter from Cassandra Bruce (“Bruce”), a prisoner incarcerated at the Michigan Department of Corrections’ Huron Valley Complex for Women in Ypsilanti, Michigan. In that letter, which was dated May 18, 2012, Bruce explained that she believed that her right to adequate medical care had been violated and stated that she was “requesting at this time an extention [sic] in filing with the DOJ . . . as well as an extention [sic] on the Michigan statute of limitations . . . for this personal injury claim.” (Doc. 1 at 1.) The letter did not have a caption, did not have a title, did not name a defendant, and did not request

damages; however, it was docketed as a civil complaint and Bruce was instructed to submit an application to proceed *in forma pauperis*, which she did. (Doc. 5.) The application was granted and, on July 13, 2012, service was ordered upon “John Doe.” (Doc. 7.) No waiver of service was returned.

On September 7, 2012, the Court received a second letter from Bruce stating that

[i]n May of this year, I wrote the court a letter inquiring about filing a civil action. I did not mean for that letter to be the civil action. I was asking the court if I could have an extension for filing the civil action as I was running out of the time required for a civil action to be filed.

. . . .

I would like this action on the . . . case halted, and the partial filing fee of \$50.00 that was removed from my account on August 9, 2012, returned to my account, as it was not my intention to file a civil action, I was merely requesting some instruction . .

..

(Doc. 10 at 1.)

In light of Bruce’s clarification that she did not intend her letter to initiate a civil suit, I suggest that the case be dismissed without prejudice and that Bruce’s partial filing fee be returned to her prisoner trust account.

III. REVIEW

Pursuant to Rule 72(b)(2) of the Federal Rules of Civil Procedure, “[w]ithin 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party’s objections within 14 days after being served with a copy.” Fed. R. Civ. P. 72(b)(2). *See also* 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed.2d 435 (1985); *Howard v.*

Sec'y of Health & Human Servs., 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this magistrate judge.

s/ Charles E Binder

CHARLES E. BINDER
United States Magistrate Judge

Dated: September 12, 2012

CERTIFICATION

I hereby certify that this Report and Recommendation was electronically filed this date, served by first class mail on Cassndra Bruce, #502798, Huron Valley Correctional Facility, 3201 Bemis Rd., Ypsilanti, MI, 48197-0911; and served on District Judge Steeh in the traditional manner.

Date: September 12, 2012

By s/ Jean L. Broucek
Case Manager to Magistrate Judge Binder